



OFFICE OF THE SECRETARY OF DEFENSE  
RESERVE FORCES POLICY BOARD

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MAY 31 2013

CHAIRMAN

INFO MEMO

FOR: SECRETARY OF DEFENSE

FROM: MajGen Arnold L. Punaro, USMCR (Ret), Chairman, Reserve Forces Policy Board

SUBJECT: Report of the Reserve Forces Policy Board on the Reserve Component  
Survivor Benefit Plan Disparity Issue

- The Reserve Forces Policy Board (RFPB) is a federal advisory committee established to provide you with independent advice and recommendations on strategies, policies and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components.
- The RFPB met on April 3, 2013 and voted to recommend the Department ask Congress to change the law regarding the Reserve Component Survivor Benefit Plan (RCSBP) (TAB A).
- Inconsistencies in compensation for Reserve Component (RC) members exist today due to the overarching need to reform reserve component duty statuses. The 2001 Quadrennial Defense Review plainly acknowledged the need for reform - the current reserve component duty status "system is complex, aligns poorly to current training and mission support requirements, fosters inconsistencies in compensation, and complicates rather than supports effective budgeting." The 2008 Commission on the National Guard and Reserve (CNGR) also pointed out that "there are 32 different duty statuses and each Service has variations of those 32 duty statuses, which only adds to the confusion." Active component members have a single duty status—"active duty"—while reservists serve in an array of statuses that are driven by a wide range of policies, laws, and types of duty (TAB B). The CNGR recommended significantly reducing the duty statuses and DoD concurred. Most recently, the 11th Quadrennial Review of Military Compensation (QRMC) stated that "the reserve duty system consists of a plethora of authorities to order a reserve component member to duty and a variety of purposes of duty—all of which need to be tracked in order to justify the budget request, remain within authorized strength limits, and comply with utilization restrictions. The QRMC found that without first addressing the convoluted and complex system of reserve duty, it would be difficult to bring meaningful change to compensation and benefits." (TAB C)
- Notwithstanding the recommendations and agreement, to date, the duty statuses have not been reduced.
- Based on the problem associated with duty statuses, the following disparity was discovered: the family of a service member killed in the line of duty will receive differing amounts of annuity payments depending solely on the administrative duty status (Active Duty versus Inactive Duty Training) for a traditional (part-time) guardsman or reservist.

- The 11th QRMC (TAB C) cites an example using hypothetical O-4s, each with 18 years of service (10 years of service for retired pay computation purposes). The monthly Survivor Benefit Plan (SBP) for the surviving spouse of the RC member on Active Duty orders would be \$2,908, while the spouse of the RC member in Inactive Duty Training (IDT) status would be \$969...even if both deaths occur in the line of duty, during the same incident.
- The family of the Reserve Component member on Active Duty orders is also eligible for SBP benefits, which provides significantly more in survivor benefit payments than those members in IDT status who are eligible only for RCSBP.
- SBP is calculated based on “years of service”; whereas, RCSBP is calculated based solely on “active service” or total points computed under Title 10 Sec 12733.
- The family of the RC member on Active Duty orders is also eligible for other key survivor benefits not provided to the family of the member in IDT status. These include:
  - 1) Annuity calculations with a disability rating of “total”.
  - 2) Special Survivor Indemnity Allowance (Title 10, 1450).
  - 3) The choice to extend SBP eligibility directly to dependent children (Title 10, 1448).
- The 11<sup>th</sup> QRMC (TAB C) recommended the following: “Calculate Survivor Benefit Plan benefits for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty.” The Military Coalition (33 military, veteran, and uniformed service organizations) urged this change as well.
- Congressman Chaffetz introduced H.R. 1770 on April 26, 2013 (TAB D). According to a preliminary score by the Congressional Budget Office during the 112th Congress, changing the relevant sections of Title 10 to eliminate disparities would cost \$12 million over a ten-year period, including \$1 million in retroactive payments for families dating back to 2001.
- Therefore, the Board recommends the following (TAB A):
  - The SecDef should support H.R. 1770, or amendments containing similar language, as a primary course of action.
  - If H.R. 1770 fails to become law, the Secretary of Defense should direct the DOD staff to provide a Unified Legislation and Budgeting Process (ULB) proposal supporting on-going legislative efforts by Congress to remove the distinctions between “Active Duty” and “Inactive Duty” as they apply to the current Survivor Benefit Plan and Reserve Component Survivor Benefit Plan. The ULB should also include provisions that address:
    - Removal of the word “active” from “active service” to enable equitable treatment under provisions in Title 10, USC, Chapter 73, Subchapter II, Survivor Benefit Plan, section 1451(c)(1)(A)(iii).
    - The calculation of annuity payments awarded to qualifying survivors.
    - The choice to extend eligibility directly to dependent children.
    - Eligibility for the Special Survivor Indemnity Allowance.
    - Annuity calculations based on a disability rating of “total”.
- As required by the Federal Advisory Committee Act, recommendations were deliberated and approved in an open, public session. The briefing presented to and approved by the Board

(TAB A) has been posted to the RFPB public website. Additional background information is submitted as TAB E. The basic overview of the RFPB is submitted as TAB F.

COORDINATION: NONE

Prepared by: Maj Gen James N. Stewart, 703-681-0600



***Subcommittee on Supporting Service Members,  
Families, & Employers***

**As approved by RFPB – 03 April 2013**

***Ms. Paulette Mason  
Subcommittee Chair***



# Department of Defense Reserve Forces Policy Board

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## Reserve Component Survivor Benefits Plan (SBP) Disparity Issue



# DFAS Audit of RC Survivor Benefit Payments Issue



- Defense Finance and Accounting Service (DFAS) Audit of RC Survivor Benefit Payments between Nov 2001-Jan 2012
  - Inactive Duty Status deaths paid incorrectly IAW SBP laws/regulations
    - 95 family members overpaid (72 Army, 15 Air Force, and 8 Navy)
    - Approximately \$3.5 million
- DFAS Jan 2012 Letter
  - Sent to surviving spouses and children of deceased reservists
  - Stated a “**significant error**” was made in overpayment of survivor benefits based on duty status at the time of death
  - Stated
- Highlighted the reduced benefits for surviving family of a Reserve Component (RC) member on “Inactive Duty Training” (IDT) status versus “Active Duty” (AD) status



# Survivor Benefits Plan Legislation

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- Relevant Public Laws, impacting Title 10 USC, Chapter 73, Subchapter II, Survivor Benefit Plan (SBP):
  - PL 107-107 – SEC. 642 (28 Dec 01)** authorized SBP annuities for spouses of service members who died in the line of duty while on **Active Duty** and were not yet eligible for retirement retroactive to September 10, 2001.
  - PL 108-136 – SEC. 644 & 645 (24 Nov 03)** added Child SBP for **Active Duty** deaths and authorized SBP annuities for members who died while in an Inactive Duty for Training status (**different computation method**).
  - PL 111-31 – SEC. 201 (22 Jun 09)** expanded the Special Survivor Indemnity allowance (SSIA) benefit awarded to surviving spouses whose SBP payments have been offset (partially or totally) as a result of receiving Dependency and Indemnity Compensation (DIC), including surviving spouses of members who died **while serving on active duty**.



# Survivor Benefits Plan Law

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- According to Title 10, USC, Chapter 73, Subchapter II, Survivor Benefit Plan, section 1451(c)(1)(A)(iii)...

*“In the case of an annuity provided under section 1448 (f) of this title, such retired pay shall be computed based upon the member or former member’s years of **active service** when he/she died computed under **section 12733** of this title.”*



# Reserve Component SBP Disparity Issue

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- Current **Implementation & Interpretation** of Title 10 USC Chapter 73, Subchapter II, Survivor Benefit Plan resulted in:
  - The computation of RC Survivor Benefits based on the definition of **active service** status
  - The surviving family of a member killed in the line of duty can receive markedly lower survivor benefits depending solely on the duty/pay status of a Reserve Component member at the time of death (Active Duty versus Inactive Duty Training)



# Reserve Component SBP Computation Issue

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- Survivor Benefit Plan (SBP) annuity payments calculated differently depending on the RC member's duty status at the time of death (Active Duty vs. Inactive Duty)
  - The family of the AD member is eligible for SBP, which provides significantly more in survivor benefit payments than IDT members who are eligible for Reserve Component Survivor Benefit Plan (RCSBP)
  - SBP is calculated based on **“years of service”** whereas RCSBP is calculated based solely on **“active service”** or **total points** computed under Title 10 Sec 12733



# Reserve Component SBP Disparity Example

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## EQUITABLE OUTCOME FOR FAMILIES

- Two Air Force majors each with 18 years of service, one is an active duty member and the other is a reservist in Active Duty (AD) status, perish when their F-15E crashes. The surviving spouse of each pilot receives a monthly survivor benefit payment of \$2,908.

## NON-EQUITABLE OUTCOME FOR FAMILIES

- Now consider the same scenario except the reservist is in Inactive Duty Training (IDT) status when the plane crashes. The surviving spouse of the active duty pilot receives a monthly survivor benefit payment of **\$2,908** while the spouse of the reservist receives **\$969**.



# Reserve Component SBP More Disparities

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- The family of the AD member is also eligible for other key survivor benefits not afforded the family of the IDT member to include:
  - 1) Calculations of an active duty death with a disability rating of “total”
  - 2) Special Survivor Indemnity Allowance (Title 10, 1450)
  - 3) SBP eligibility extended to spouse or dependent children (Title 10, 1448)
- These disparities in survivor benefits apply to all Reserve Components (including the National Guard)



# Reserve Component SBP Findings



- ASD RA's FY 2012 Unified Legislation and Budgeting (ULB) concerning Equitable RC SBP was withdrawn
  - Removing the word "**active**" would enable equitable treatment
  - OASD RA plans to resubmit
- 11<sup>th</sup> Quadrennial Review of Military Compensation, published in June 2012
  - Addressed disparity in survivor benefits
  - Recommended to *"Calculate Survivor Benefit Plan benefits for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty."*
- SECAF received Air Reserve Forces Policy Committee brief on Dec 2012
- The Military Coalition (34 military, veterans, and uniformed service organizations) support change
  - Formerly adopted issue into their Survivor Programs Committee Goals for 2013.
    - National Guard Association of the United States (NGAUS)
    - Military Officers Association of America (MOAA)
    - Reserve Officers Association (ROA)



# Reserve Component SBP Findings

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- Congressman Austria (now retired) submitted an amendment during the 112<sup>th</sup> Congress, 2D Session:

*To amend title 10, United States Code, to eliminate the different treatment under Survivor Benefit Plan accorded members of the reserve components who die from an injury or illness incurred or aggravated in the line of duty during inactive-duty training compared to members of the Armed Forces who die in the line of duty while on active duty.*

- The legislation was scored by the CBO and vetted through key military/veterans organizations
- Efforts are underway to re-draft and introduce the legislation by a bipartisan group of Members during the 113<sup>th</sup> Congress



# Reserve Component SBP Observation



- This issue easily resolved if the number of reserve component member duty statuses reduced as recommended by:
  - The Commission on the National Guard and Reserve in 2008
  - The Vice Chief of the JCS and ASD/RA's Comprehensive Review of the Future Role of the Guard and Reserve in 2011
  - Quadrennial Review of Military Compensation in 2012



# Reserve Component SBP Recommendation #1

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**Recommendation:** The Secretary of Defense should direct the DOD staff to provide a Unified Legislative Budget (ULB) proposal supporting on-going legislative efforts by Congress to remove the distinctions between “Active Duty” and “Inactive Duty” as they apply to the Survivor Benefit Plan and Reserve Component Survivor Benefit Plan. The ULB should include provisions that address:

- Removal of the word “active” from “active service” to enable equitable treatment under provisions in Title 10, USC, Chapter 73, Subchapter II, Survivor Benefit Plan, section 1451(c)(1)(A)(iii).
- The calculation of annuity payments awarded to qualifying survivors.
- Eligibility of the surviving spouse or children of the reserve component member.
- Eligibility of surviving spouse for the Special Survivor Indemnity Allowance.
- Benefit calculations based on a disability rating of “total”.

CREATING A CONTINUUM OF SERVICE:  
PERSONNEL MANAGEMENT FOR AN INTEGRATED TOTAL FORCE

bring a reservist on duty to accomplish a mission or fulfill a requirement. In other cases, personnel managers have been unable to access the reserve personnel they need because of constraints on the various duty statuses. The current duty status system makes it difficult to gain a real understanding of requirements for and use of reserve component members. It is complex, aligns poorly to training and mission support requirements, fosters inconsistencies in compensation, and complicates rather than supports effective budgeting and execution.

Since the first militia was established in the Colonies, a military status has been assigned to all physically fit males eligible for military service. In 1792, the Second Congress of the United States passed an act that differentiated between men being called out for “service” and called out for “exercise”—the latter did not require them to bring knapsacks.<sup>188</sup> The Militia Act of 1903, often called the Dick Act, established two classes of militia—“the organized militia, thenceforth to be known as the National Guard[,] . . . and the reserve military, composed of all other similar forces that were not a part of the National Guard.” The Dick Act also required members of the National Guard to attend 24 drills and five days of annual training yearly. The National Defense Act of 1916 increased the number of annual training days to 15, and the number of yearly drills to 48. In 1920, National Guardsmen became entitled to “drill pay”—at a rate of one-thirtieth of the base pay for their grade for each regular drill or assembly attended. In 1952, Congress divided the reserves into a Ready Reserve, Standby Reserve, and Retired Reserve, making further distinctions among reservists.<sup>189</sup>

Subsequently, many additional statuses have been created by Congress—as well as the services—with implementing guidance by the Department of Defense and the reserve components. Some of the statuses (now called “duty statuses”) are established in statute, as Congress has spelled out the purpose of and constraints on the use of the reserves; others have been created by DOD as new roles and missions for the reserves developed. According to an 18-month study commissioned by the Office of the Assistant Secretary of Defense for Reserve Affairs, there are a total of 29 duty statuses set forth either in DOD directives or by law, only slightly more than half of which are named by statute.<sup>190</sup> In a 2004 report, DOD noted that “there are 32 different duty statuses and each Service has variations of those 32 duty statuses, which only adds to the confusion.”<sup>191</sup>

Active component members have a single duty status—“active duty”—while reservists serve in an array of statuses that are driven by a wide range of policies, laws, and types of duty. More specifically, the statuses vary with respect to

- Authority in United States Code (Titles 10, 14, or 32).
- Funding appropriation (military personnel appropriations or reserve personnel appropriations).
- Commitment (voluntary or involuntary).
- Mission (training, support, or operational).
- Duty (active duty or inactive duty).

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188 Wexford Group International, *Reserve Component Military Duty Status Study: Considerations on Changing the Reserve Component Duty Status System (Phase II, Task 3)*, October 31, 2002, p. 4.

189 These laws are discussed in the *Military Compensation Background Papers*, 6th ed. (published under the auspices of the Under Secretary of Defense (Personnel and Readiness), May 2005), pp. 229, 230, 232, 234–35, 242.

190 Wexford Group International, *Reserve Component Military Duty Status Study (Phase II, Task 3b)*, pp. 4, 5.

191 *Department of Defense Report to Congress: Reserve Personnel Compensation Program Review* ([Washington, DC]: Office of the Under Secretary of Defense for Personnel and Readiness, 2004), p. 25, hereafter cited as *Reserve Personnel Compensation Program Review*.

## CREATING A CONTINUUM OF SERVICE: PERSONNEL MANAGEMENT FOR AN INTEGRATED TOTAL FORCE

- End strength accounting (active component, reserve component, or Active Guard and Reserve [AGR]).<sup>192</sup>

These factors help explain the proliferation of duty statuses. As military strategy and reserve roles and missions changed, new duty statuses were created to solve problems that arose or to codify an existing practice, guaranteeing that all reserve activity would fall within the definition of at least one status.

The Total Force Policy and the drive for a more cost-effective military have significantly changed how the reserve components are used, thereby affecting reserve statuses. The reserves are no longer the force held back, to be mobilized during war only to augment the active component or provide casualty replacements. Today they are an integrated partner on the battlefield and often among the first called to duty. The increased reliance on and use of the reserves has brought to wider attention the labyrinthine system of reserve duty statuses. These complexities, embedded in law, regulation, and policy, have created a system unable to support either the member or the commander leading a joint and total force of active and reserve personnel. The system of duty statuses simply does not foster the effective use of our military today.

U.S. military leadership has known for many years that the reserve component duty statuses are problematic. A review, directed by the 2001 Quadrennial Defense Review, plainly acknowledged the need for reform: the current duty status “system is complex, aligns poorly to current training and mission support requirements, fosters inconsistencies in compensation, and complicates rather than supports effective budgeting.”<sup>193</sup>

### Analysis of Duty Status Issues

Reforming the duty status system involves issues of the ease of employment and administration of reservists as well as fairness in their compensation. This section examines (1) concerns of accounting and financial stakeholders, (2) identified problems with the current duty status construct, and (3) the characteristics of an optimal duty status system.

#### *Accounting and Financial Stakeholders*

Those who have a stake in duty status classifications need a system that satisfies many different requirements. The high number of different requirements that they have identified and mandated helps explain why so many duty statuses exist today. Any future system will need to satisfy those who use and benefit from the current duty statuses. Stakeholders fall into two major categories: those who account for reservists and those who have an interest in reservists’ pay and compensation.

Accounting stakeholders are the individuals responsible for recording the purpose of, type of, and reason for each reservist’s duty. The process is often driven by managers of the military and reserve components, who rely on established laws and policies to count reservists. These stakeholders include personnel administrators, who are responsible to their commanders for an accurate accounting of personnel assigned to the unit; judge advocates, who are concerned with the legal constraints placed on reservists; the services, which must account for end strength; and Congress, which oversees the nation’s use of the reserve component and often establishes the accounting requirements. Lacking a single point or office at the headquarters level “where both the fiscal management and the personnel management come together for management or analysis” complicates the reserve components’ ability to “identify and track between the budgeted level of duty status participation and the amount

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<sup>192</sup> Wexford Group International, *Reserve Component Military Duty Status Study (Vol. 1, Recommendations)*, p. 2.

<sup>193</sup> *Review of Reserve Component Contributions to National Defense*, directed by the 2001 Quadrennial Defense Review ([Washington, DC: Office of the Assistant Secretary of Defense for Reserve Affairs], 2002), p. 77.

benefit paid for with taxpayer dollars—which is the only part of the benefit that is duplicative—should continue to be offset. This approach honors the retiree’s desire to provide for the financial well-being of his or her survivors, but also avoids dual payment of taxpayer-funded compensation, since offset of the government-subsidized portion would remain intact.

**RECOMMENDATION: ANNUITY OFFSET**

Modify the Dependency and Indemnity Compensation and the Survivor Benefit Plan offset to allow the surviving spouse to receive that portion of the Survivor Benefit Plan annuity funded by retiree premiums (approximately 50 percent).

### Inactive Duty Death Annuity

Another concern with the SBP is the disparity between the treatment of reserve component members who die on active duty and reserve component personnel who die while performing inactive duty. Under current law, survivors of reserve component members who die on active duty (as well as active component members) receive the maximum annuity—75 percent of basic pay times 55 percent. When a reserve component member dies while performing inactive duty, the survivor annuity is based on the member’s years of service—a formula that results in a significantly lower annuity.<sup>125</sup> Yet like those personnel who die on active duty, reservists who die on inactive duty are still performing military duty at the time of their death, and often this duty is required training.

Several examples illustrate just how significant the difference in annuity can be. Consider, for example, an aircrew consisting of three married service members: one on active duty; one reserve member on two weeks of annual training (active duty); and one reserve member performing inactive duty. All three are E-5s with eight years of service, and the two reserve members have the equivalent of four years of service for retired pay computation purposes. If all three members perish while performing a mission, the monthly SBP payment for the surviving spouses of the two members on active duty would be \$1,155, while the monthly SBP payment for the reserve member on inactive duty would be \$154.<sup>126</sup> Yet all three members died while performing the same mission. **If the three crewmembers were O-4s with 18 years of service and each reserve officer had 10 years of service for retired pay computation purposes,**

125. The formula for determining the SBP annuity for the survivor of a service member who died while performing inactive duty is as follows: Basic Pay x (2.5% x Computed Years of Service) x 55%. This yields a significantly smaller benefit than the calculation for active or reserve members who die on active duty: Basic Pay x 75% x 55%.

126. Calculation based on the 2011 pay table.

the monthly SBP for the surviving spouses of the two active duty officers would be \$2,908, while the spouse of the reserve officer performing inactive duty would receive \$969.

The SBP annuity for reserve component personnel who die while performing inactive duty is significantly less than the benefit available to survivors of active duty members and reserve members who die on active duty. Despite their inactive duty status, these reservists are still performing military duties at the time of their death. Moreover, the survivors of reservists who die on inactive duty do qualify for other unreduced survivor benefits, such as the death gratuity and SGLI. For these reasons, the annuity provided to the survivors of those who die while on inactive duty should be consistent with the annuity provided to the survivors of active or reserve members who die on active duty.

The QRMC has identified two strategies for making the annuities consistent. The first would be to expand the active duty death benefit provision in current law to include members who die while performing inactive duty. Alternatively, the formula currently used to determine the annuity for survivors of those who die while performing inactive duty could be replaced with the formula used for those who die while serving on active duty. Either approach would ensure consistent annuity calculations.

**RECOMMENDATION: SURVIVOR BENEFIT PLAN FOR RESERVISTS**

Calculate Survivor Benefit Plan benefits for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty.

## Conclusion

The constellation of compensation programs available to wounded warriors and their families provides critical assistance that helps offset the financial repercussions when a member is injured or dies in the line of duty. Such financial assistance can be traced back to the earliest days of the republic, when compensation benefits were granted to survivors of officers who died as a result of the Revolutionary War. Since then, the array of available benefits has expanded and evolved into a robust support system that compensates for many of the financial losses experienced by injured personnel and their families.

113TH CONGRESS  
1ST SESSION

# H. R. 1770

To amend title 10, United States Code, to eliminate the different treatment under the Survivor Benefit Plan accorded members of the reserve components who die from an injury or illness incurred or aggravated in the line of duty during inactive-duty training compared to members of the Armed Forces who die in the line of duty while on active duty.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. CHAFFETZ (for himself, Mr. BARBER, Mr. BISHOP of Utah, Mr. RICE of South Carolina, and Mr. STEWART) introduced the following bill; which was referred to the Committee on Armed Services

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## A BILL

To amend title 10, United States Code, to eliminate the different treatment under the Survivor Benefit Plan accorded members of the reserve components who die from an injury or illness incurred or aggravated in the line of duty during inactive-duty training compared to members of the Armed Forces who die in the line of duty while on active duty.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. EQUAL BENEFITS UNDER SURVIVOR BENEFIT**  
 2 **PLAN FOR RESERVE COMPONENT MEMBERS**  
 3 **WHO DIE IN THE LINE OF DUTY DURING IN-**  
 4 **ACTIVE-DUTY TRAINING.**

5 (a) TREATMENT OF INACTIVE-DUTY TRAINING IN  
 6 SAME MANNER AS ACTIVE DUTY.—Section 1451(c)(1)(A)  
 7 of title 10, United States Code, is amended—

8 (1) in clause (i)—

9 (A) by inserting “or 1448(f)” after “sec-  
 10 tion 1448(d)”; and

11 (B) by inserting “or (iii)” after “clause  
 12 (ii)”; and

13 (2) in clause (iii), by striking “section 1448(f)  
 14 of this title” and inserting “section 1448(f)(1)(A) of  
 15 this title by reason of the death of a member or  
 16 former member not in line of duty”.

17 (b) CONSISTENT TREATMENT OF DEPENDENT CHIL-  
 18 DREN AND DEEMED ELECTIONS.—Section 1448(f) of  
 19 such title is amended—

20 (1) by striking paragraph (2) and inserting the  
 21 following new paragraph:

22 “(2) DEPENDENT CHILDREN.—

23 “(A) ANNUITY WHEN NO ELIGIBLE SUR-  
 24 VIVING SPOUSE.—In the case of a member de-  
 25 scribed in paragraph (1), the Secretary con-  
 26 cerned shall pay an annuity under this sub-

1 chapter to the member's dependent children  
2 under section 1450(a)(2) of this title as appli-  
3 cable.

4 “(B) OPTIONAL ANNUITY WHEN THERE IS  
5 AN ELIGIBLE SURVIVING SPOUSE.—The Sec-  
6 retary may pay an annuity under this sub-  
7 chapter to the member's dependent children  
8 under section 1450(a)(3) of this title, if applica-  
9 ble, instead of paying an annuity to the sur-  
10 viving spouse under paragraph (1), if the Sec-  
11 retary concerned, in consultation with the sur-  
12 viving spouse, determines it appropriate to pro-  
13 vide an annuity for the dependent children  
14 under this paragraph instead of an annuity for  
15 the surviving spouse under paragraph (1).”;  
16 and

17 (2) by adding at the end the following new  
18 paragraph:

19 “(5) DEEMED ELECTION TO PROVIDE AN AN-  
20 NUITY FOR DEPENDENT.—Paragraph (6) of sub-  
21 section (d) shall apply in the case of a member de-  
22 scribed in paragraph (1) who dies after November  
23 23, 2003, when no other annuity is payable on be-  
24 half of the member under this subchapter.”.

1 (c) AVAILABILITY OF SPECIAL SURVIVOR INDEMNITY  
2 ALLOWANCE.—Section 1450(m)(1)(B) of such title is  
3 amended by inserting “or (f)” after “subsection (d)”.

4 (d) EFFECTIVE DATE; APPLICATION OF AMEND-  
5 MENTS.—

6 (1) RETROACTIVE APPLICATION.—Except as  
7 provided in the amendment made by subsection  
8 (b)(2), the amendments made by this section shall  
9 take effect as of September 10, 2001, and shall  
10 apply with respect to deaths of members of the  
11 Armed Forces occurring after that date.

12 (2) PAYMENT ADJUSTMENT AND LUMP-SUM  
13 PAYMENTS.—The Secretary of Defense shall—

14 (A) require payments under the Survivor  
15 Benefit Plan for months beginning after the  
16 date of the enactment of this section to be ad-  
17 justed to reflect the amendments made by this  
18 section; and

19 (B) provide a lump-sum payment to cover  
20 the period between the death of the member  
21 concerned (or October 1, 2008, if later than  
22 that date in the case of the special survivor in-  
23 demnity allowance) and the date the adjustment  
24 takes effect under subparagraph (A).

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(Added Pub. L. 92-425, Sec. 1(3), Sept. 21, 1972, 86 Stat. 706; amended Pub. L. 94-496, Sec. 1(1), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, Sec. 201, Sept. 30, 1978, 92 Stat. 843; Pub. L. 96-402, Sec. 2, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97-252, title X, Sec. 1003(a), Sept. 8, 1982, 96 Stat. 735; Pub. L. 98-94, title IX, Sec. 941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99-145, title VII, Sec. 719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; Pub. L. 99-348, title III, Sec. 301(a)(1), July 1, 1986, 100 Stat. 702; Pub. L. 99-661, div. A, title XIII, Sec. 1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100-180, div. A, title XII, Sec. 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101-189, div. A, title XIV, Sec. 1407(a)(1)-(3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 101-510, div. A, title XIV, Sec. 1484(l)(4)(C)(i), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103-337, div. A, title XVI, Sec. 1671(d), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-201, div. A, title VI, Sec. 634, Sept. 23, 1996, 110 Stat. 2551.)

## § 1448. Application of Plan

### (a) GENERAL RULES FOR PARTICIPATION IN THE PLAN.—

(1) NAME OF PLAN; ELIGIBLE PARTICIPANTS.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) PARTICIPANTS IN THE PLAN.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) STANDARD ANNUITY PARTICIPANTS.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) RESERVE-COMPONENT ANNUITY PARTICIPANTS.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

### (3) ELECTIONS.—

(A) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING STANDARD ANNUITY.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING RESERVE-COMPONENT ANNUITY.—A married per-

son who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) EXCEPTION WHEN SPOUSE UNAVAILABLE.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) NOTICE TO SPOUSE OF ELECTION TO PROVIDE FORMER SPOUSE ANNUITY.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) IRREVOCABILITY OF ELECTIONS.—

(A) STANDARD ANNUITY.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) RESERVE-COMPONENT ANNUITY.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) PARTICIPATION BY PERSON MARRYING AFTER RETIREMENT, ETC.—

(A) ELECTION TO PARTICIPATE IN PLAN.—A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) MANNER AND TIME OF ELECTION.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) LIMITATION ON REVOCATION OF ELECTION.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) EFFECTIVE DATE OF ELECTION.—The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) ELECTION OUT OF PLAN BY PERSON WITH SPOUSE COVERAGE WHO REMARRIES.—

(A) GENERAL RULE.—A person—

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) EFFECT OF ELECTION ON RETIRED PAY.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) TERMS AND CONDITIONS OF ELECTION.—An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) NOTICE TO SPOUSE.—If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse, the person's spouse shall be notified of that election.

(E) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—

(1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—

(A) GENERAL RULE.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) **TERMINATION OF COVERAGE.**—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) **FORM FOR DISCONTINUATION.**—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) **WITHDRAWAL OF REQUEST FOR DISCONTINUATION.**—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) **CONSEQUENCES OF DISCONTINUATION.**—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a) or under subparagraph (G) of this paragraph.

(F) **VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.**—If a member retired after November 23, 2003, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

(i) an election made by the member under paragraph (1) to provide an annuity under the Plan to any person other than a dependent of that member (as defined in section 1072(2) of this title) is vitiated; and

(ii) the amounts by which the member's retired pay was reduced under section 1452 of this title shall be refunded and paid to the person to whom the annuity under the Plan would have been paid pursuant to such election.

(G) ELECTION OF NEW BENEFICIARY UPON DEATH OF PREVIOUS BENEFICIARY.—

(i) AUTHORITY FOR ELECTION.—If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) PROCEDURES.—Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

(iii) VITIATION OF ELECTION BY PARTICIPANT WHO DIES WITHIN TWO YEARS OF ELECTION.—If a person providing an annuity under a election under clause (i) dies before the end of the two-year period beginning on the effective date of the election—

(I) the election is vitiated; and

(II) the amount by which the person's retired pay was reduced under section 1452 of this title that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the vitiated election if the deceased person had died after the end of such two-year period.

(2) FORMER SPOUSE COVERAGE UPON BECOMING A PARTICIPANT IN THE PLAN.—

(A) GENERAL RULE.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) EFFECT OF FORMER SPOUSE ELECTION ON SPOUSE OR DEPENDENT CHILD.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) DESIGNATION IF MORE THAN ONE FORMER SPOUSE.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) FORMER SPOUSE COVERAGE BY PERSONS ALREADY PARTICIPATING IN PLAN.—

(A) ELECTION OF COVERAGE.—

(i) AUTHORITY FOR ELECTION.—A person—

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan, may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) TERMINATION OF PREVIOUS COVERAGE.—Any such election terminates any previous coverage under the Plan.

(iii) MANNER AND TIME OF ELECTION.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) LIMITATION ON ELECTION.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) IRREVOCABILITY, ETC.—An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) NOTICE TO SPOUSE.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) EFFECTIVE DATE OF ELECTION.—An election under this paragraph is effective as of—

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) FORMER SPOUSE AND CHILD COVERAGE.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) DISCLOSURE OF WHETHER ELECTION OF FORMER SPOUSE COVERAGE IS REQUIRED.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at

the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth—

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) **PERSONS ON TEMPORARY DISABILITY RETIRED LIST.**—The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) **COVERAGE FOR SURVIVORS OF MEMBERS WHO DIE ON ACTIVE DUTY.**—

(1) **SURVIVING SPOUSE ANNUITY.**—Except as provided in paragraph (2)(B), the Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of—

(A) a member who dies while on active duty after—

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) **DEPENDENT CHILDREN.**—

(A) **ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.**—

In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the member's dependent children under section 1450(a)(2) of this title as applicable.

(B) **OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.**—In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) **MANDATORY FORMER SPOUSE ANNUITY.**—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has

made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) PRIORITY.—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(6) DEEMED ELECTION.—

(A) ANNUITY FOR DEPENDENT.—In the case of a member described in paragraph (1) who dies after November 23, 2003, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

(B) COMPUTATION OF ANNUITY.—An annuity under this subparagraph shall be computed under section 1451(b) of this title as if the member had retired for total disability on the date of death with reductions as specified under section 1452(c) of this title, as applicable to the ages of the member and the natural person with an insurable interest.

(e) DESIGNATION FOR COMMENCEMENT OF RESERVE-COMPONENT ANNUITY.—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on—

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) COVERAGE OF SURVIVORS OF PERSONS DYING WHEN OR BEFORE ELIGIBLE TO ELECT RESERVE-COMPONENT ANNUITY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who—

(A) is eligible to provide a reserve-component annuity and dies—

(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or  
 (B) is a member of a reserve component not described in subparagraph (A) and dies from an injury or illness incurred or aggravated in the line of duty during inactive-duty training.

~~(2) DEPENDENT CHILD ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.~~

**(2) DEPENDENT CHILDREN.—**

**(A) ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.—**In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this sub-chapter to the member's dependent children under section 1450(a)(2) of this title as applicable.

**(B) OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—**The Secretary may pay an annuity under this sub-chapter to the member's dependent children under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

**(5) DEEMED ELECTION TO PROVIDE AN ANNUITY FOR DEPENDENT.—**Paragraph (6) of subsection (d) shall apply in the case of a member described in paragraph (1) who dies after November 23, 2003, when no other annuity is payable on behalf of the member under this subchapter.

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(g) ELECTION TO INCREASE COVERAGE UPON REMARRIAGE.—

(1) ELECTION.—A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) PAYMENT REQUIRED.—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) AMOUNT TO BE PAID.—The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

**(5) DEEMED ELECTION TO PROVIDE AN ANNUITY FOR DEPENDENT.—Paragraph (6) of subsection (d) shall apply in the case of a member described in paragraph (1) who dies after November 23, 2003, when no other annuity is payable on behalf of the member under this subchapter.**

(B) the amount of such person's retired pay actually withheld.

(4) MANNER OF MAKING ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) DISPOSITION OF PAYMENTS.—A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added Pub. L. 92-425, Sec. 1(3), Sept. 21, 1972, 86 Stat. 707; amended Pub. L. 94-496, Sec. 1(2), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, Sec. 202, Sept. 30, 1978, 92 Stat. 844; Pub. L. 97-252, title X, Sec. 1003(b), Sept. 8, 1982, 96 Stat. 735; Pub. L. 97-295, Sec. 1(18), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98-94, title IX, Sec. 941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99-145, title V, Sec. 513(b), title VII, Sec. 712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673-676; Pub. L. 99-661, div. A, title VI, Sec. 641(b)(1), 642(a), title XIII, Sec. 1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 101-189, div. A, title XIV, Sec. 1407(a)(2), (3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 103-337, div. A, title VI, Sec. 638, title XVI, Sec. 1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015; Pub. L. 104-201, div. A, title VI, Sec. 634, Sept. 23, 1996, 110 Stat. 2553; Pub. L. 105-85, div. A, title X, Sec. 1073(a)(27), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105-261, div. A, title VI, Sec. 643(a), Oct. 17, 1998, 112 Stat. 2047; Pub. L. 106-65, div. A, title X, Sec. 1066(a)(12), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106-398, Sec. 1 [[div. A], title VI, Sec. 655(a), (b) (c)(1)-(3), title X, Sec. 1087(a)(10)], Oct. 30, 2000, 114 Stat. 1654, 1654A-165, 1654A-166, 1654A-290; Pub. L. 107-107, div. A, title VI, Sec. 642(a), (c)(1), Dec. 28, 2001, 115 Stat. 1151, 1152; Pub. L. 108-136, div. A, title VI, Secs. 644(a), (b), 645(a), (b)(1), (c), Nov. 24, 2003, 117 Stat. 1517-1519; Pub. L. 108-375, div. A, title X, Sec. 1084(d)(10), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109-364, div. A, title VI, Secs. 643(a), 644(a), title X, Sec. 1071(a)(8), Oct. 17, 2006, 120 Stat. 2260, 2261, 2398.)

**§ 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay**

(a) AUTHORITY.—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) CONCURRENCE OF SPOUSE.—

(1) CONCURRENCE REQUIRED.—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) EXCEPTIONS.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) FORM OF CONCURRENCE.—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) LIMITATION ON ELECTION WHEN FORMER SPOUSE COVERAGE IN EFFECT.—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).



(d) **WITHDRAWAL OF ELECTION TO DISCONTINUE.**—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) **CONSEQUENCES OF DISCONTINUATION.**—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) **NOTICE TO AFFECTED BENEFICIARIES.**—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an election to discontinue participation under subsection (a).

(g) **EFFECTIVE DATE OF ELECTION.**—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) **INAPPLICABILITY OF IRREVOCABILITY PROVISIONS.**—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

(Added Pub. L. 105–85, div. A, title VI, Sec. 641(a)(1), Nov. 18, 1997, 111 Stat. 1797.)

### § 1449. Mental incompetency of member

(a) **ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT MEMBER.**—If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, an election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) **REVOCATION OF ELECTION BY MEMBER.**—

(1) **AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.**—If a person for whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

(2) **DEDUCTIONS FROM RETIRED PAY NOT TO BE REFUNDED.**—Any deduction made from retired pay by reason of such an election may not be refunded.

(Added Pub. L. 92–425, Sec. 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 95–397, title II, Sec. 207(a), Sept. 30, 1978, 92 Stat. 848; Pub. L. 101–189, div. A, title XIV, Sec. 1407(a)(3), title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 104–201, div. A, title VI, Sec. 634, Sept. 23, 1996, 110 Stat. 2560.)

### § 1450. Payment of annuity: beneficiaries

(a) **IN GENERAL.**—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) **SURVIVING SPOUSE OR FORMER SPOUSE.**—The eligible surviving spouse or the eligible former spouse.

(2) **SURVIVING CHILDREN.**—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) **DEPENDENT CHILDREN.**—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) **NATURAL PERSON DESIGNATED UNDER "INSURABLE INTEREST" COVERAGE.**—The natural person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) **TERMINATION OF ANNUITY FOR DEATH, REMARRIAGE BEFORE AGE 55, ETC.**—

(1) **GENERAL RULE.**—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) **TERMINATION OF SPOUSE ANNUITY UPON DEATH OR REMARRIAGE BEFORE AGE 55.**—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) **EFFECT OF TERMINATION OF SUBSEQUENT MARRIAGE BEFORE AGE 55.**—If the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) **OFFSET FOR AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.**—

(1) **REQUIRED OFFSET.**—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.

(2) **EFFECTIVE DATE OF OFFSET.**—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(3) **LIMITATION ON RECOUPMENT OF OFFSET AMOUNT.**—Any amount subject to offset under this subsection that was previously paid to the surviving spouse or former spouse shall be recouped only to the extent that the amount paid exceeds any amount to be refunded under subsection (e). In notifying a surviving spouse or former spouse of the recoupment requirement, the Secretary shall provide the spouse or former spouse—

(A) a single notice of the net amount to be recouped or the net amount to be refunded, as applicable, under this subsection or subsection (e);

(B) a written explanation of the statutory requirements for recoupment of the offset amount and for refund of any applicable amount deducted from retired pay;

(C) a detailed accounting of how the offset amount being recouped and retired pay deduction amount being refunded were calculated; and

(D) contact information for a person who can provide information about the offset recoupment and retired pay deduction refund processes and answer questions the surviving spouse or former spouse may have about the requirements, processes, or amounts.

(d) **LIMITATION ON PAYMENT OF ANNUITIES WHEN COVERAGE UNDER CIVIL SERVICE RETIREMENT ELECTED.**—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) **REFUND OF AMOUNTS DEDUCTED FROM RETIRED PAY WHEN DIC OFFSET IS APPLICABLE.**—

(1) **FULL REFUND WHEN DIC GREATER THAN SBP ANNUITY.**—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) **PARTIAL REFUND WHEN SBP ANNUITY REDUCED BY DIC.**—If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the surviving spouse or former spouse.

(f) **CHANGE IN ELECTION OF INSURABLE INTEREST OR FORMER SPOUSE BENEFICIARY.**—

(1) **AUTHORIZED CHANGES.**—

(A) **ELECTION IN FAVOR OF SPOUSE OR CHILD.**—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) **NOTICE.**—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) PROCEDURES, EFFECTIVE DATE, ETC.—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) LIMITATION ON CHANGE IN BENEFICIARY WHEN FORMER SPOUSE COVERAGE IN EFFECT.—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) REQUIRED FORMER SPOUSE ELECTION TO BE DEEMED TO HAVE BEEN MADE.—

(A) DEEMED ELECTION UPON REQUEST BY FORMER SPOUSE.—If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such

person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) REQUEST FROM FORMER SPOUSE.—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) COPY OF COURT ORDER OR OTHER OFFICIAL STATEMENT.—Either—

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) PERSONS REQUIRED TO MAKE ELECTION.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if—

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) FORMER SPOUSE COVERAGE MAY BE REQUIRED BY COURT ORDER.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) LIMITATION ON CHANGING OR REVOKING ELECTIONS.—

(1) IN GENERAL.—An election under this section may not be changed or revoked.

(2) EXCEPTIONS.—Paragraph (1) does not apply to—

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) TREATMENT OF ANNUITIES UNDER OTHER LAWS.—Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled

under any other provision of law. Such annuity shall be considered as income under laws administered by the Secretary of Veterans Affairs.

(i) ANNUITIES EXEMPT FROM CERTAIN LEGAL PROCESS.—Except as provided in subsection (l)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) EFFECTIVE DATE OF RESERVE-COMPONENT ANNUITIES.—

(1) PERSONS MAKING SECTION 1448(E) DESIGNATION.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) PERSONS DYING BEFORE MAKING SECTION 1448(E) DESIGNATION.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) ADJUSTMENT OF SPOUSE OR FORMER SPOUSE ANNUITY UPON LOSS OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) READJUSTMENT IF BENEFICIARY 55 YEARS OF AGE OR MORE.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) REPAYMENT OF AMOUNTS PREVIOUSLY REFUNDED.—

(A) GENERAL RULE.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) INTEREST REQUIRED IF REPAYMENT NOT A LUMP SUM.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) MANNER OF REPAYMENT; RATE OF INTEREST.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) DEPOSIT OF AMOUNTS REPAYED.—An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(1) PARTICIPANTS IN THE PLAN WHO ARE MISSING.—

(1) AUTHORITY TO PRESUME DEATH OF MISSING PARTICIPANT.—

(A) IN GENERAL.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) PARTICIPANT WHO IS MISSING.—A participant in the Plan is considered to be missing for purposes of this subsection if—

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) REQUIREMENTS APPLICABLE TO PRESUMPTION OF DEATH.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that—

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) COMMENCEMENT OF ANNUITY.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) EFFECT OF PERSON NOT BEING DEAD.—

(A) TERMINATION OF ANNUITY.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive—

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) COLLECTION FROM PARTICIPANT OF ANNUITY AMOUNTS ERRONEOUSLY PAID.—A debt under subparagraph (A)(ii) may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) COLLECTION FROM BENEFICIARY.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

**(m) SPECIAL SURVIVOR INDEMNITY ALLOWANCE.—**

(1) PROVISION OF ALLOWANCE.—The Secretary concerned shall pay a monthly special survivor indemnity allowance under this subsection to the surviving spouse or former spouse of a member of the uniformed services to whom section 1448 of this title applies if—

(A) the surviving spouse or former spouse is entitled to dependency and indemnity compensation under section 1311(a) of title 38;

(B) except for subsection (c) of this section, the surviving spouse or former spouse is eligible for an annuity by reason of a participant in the Plan under subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) **or (f)** of such section; and

(C) the eligibility of the surviving spouse or former spouse for an annuity as described in subparagraph (B) is affected by subsection (c) of this section.

(2) AMOUNT OF PAYMENT.—Subject to paragraph (3), the amount of the allowance paid to an eligible survivor under paragraph (1) for a month shall be equal to—

(A) for months during fiscal year 2009, \$50;

(B) for months during fiscal year 2010, \$60;

(C) for months during fiscal year 2011, \$70;

(D) for months during fiscal year 2012, \$80;

(E) for months during fiscal year 2013, \$90;

(F) for months during fiscal year 2014, \$150;

(G) for months during fiscal year 2015, \$200;

(H) for months during fiscal year 2016, \$275; and

(I) for months during fiscal year 2017, \$310.

(3) LIMITATION.—The amount of the allowance paid to an eligible survivor under paragraph (1) for any month may not exceed the amount of the annuity for that month that is subject to offset under subsection (c).

(4) STATUS OF PAYMENTS.—An allowance paid under this subsection does not constitute an annuity, and amounts so paid are not subject to adjustment under any other provision of law.

(5) SOURCE OF FUNDS.—The special survivor indemnity allowance shall be paid from amounts in the Department of Defense Military Retirement Fund established under section 1461 of this title.

(6) EFFECTIVE DATE AND DURATION.—This subsection shall only apply with respect to the month beginning on October 1, 2008, and subsequent months through the month ending on September 30, 2017. Effective on October 1, 2017, the authority provided by this subsection shall terminate. No special survivor indemnity allowance may be paid to any person by rea-

son of this subsection for any period before October 1, 2008, or beginning on or after October 1, 2017.

(Added Pub. L. 92-425, Sec. 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94-496, Sec. 1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, Sec. 203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97-22, Sec. 11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97-252, title X, Sec. 1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98-94, title IX, Sec. 941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98-525, title VI, Sec. 642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99-145, title VII, Sec. 713(b), 717, 718, 719(4)-(6), (8)(A), 722, 723(a), (b)(1), title XIII, Sec. 1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674-677, 739; Pub. L. 99-661, div. A, title VI, Sec. 641(a), (b)(2), (3), 643(a), title XIII, Sec. 1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100-26, Sec. 3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-180, div. A, title VI, Sec. 636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100-224, Sec. 5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101-189, div. A, title XIV, Sec. 1407(a)(2)-(4), title XVI, Sec. 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103-337, div. A, title X, Sec. 1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-201, div. A, title VI, Sec. 634, Sept. 23, 1996, 110 Stat. 2561; Pub. L. 105-85, div. A, title VI, Sec. 642(a), Nov. 18, 1997, 111 Stat. 1799; Pub. L. 105-261, div. A, title VI, Sec. 643(b), Oct. 17, 1998, 112 Stat. 2048; Pub. L. 106-398, Sec. 1 [[div. A], title VI, Sec. 655(c)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A-166; Pub. L. 110-181, div. A, title VI, Secs. 643(a), 644, Jan. 28, 2008, 122 Stat. 157, 158; Pub. L. 110-417, [div. A], title VI, Sec. 631(a), Oct. 14, 2008, 122 Stat. 4492; Pub. L. 111-31, div. B, title II, Sec. 201, June 22, 2009, 123 Stat. 1857.)

### § 1451. Amount of annuity

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to the product of the base amount and the percent applicable to the month, as follows:

(I) For a month before October 2005, the applicable percent is 35 percent.

(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

(V) For months after March 2008, the applicable percent is 55 percent.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be com-

puted under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(I) is less than the percent specified under subsection (a)(1)(B)(i) as being applicable for the month; and

(II) is determined under subsection (f).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) INSURABLE INTEREST BENEFICIARY.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) COMPUTATION OF RESERVE-COMPONENT ANNUITY WHEN PARTICIPANT DIES BEFORE AGE 60.—For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay, shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under section 1448(d) or 1448(f) of this title (other than in a case covered by clause (ii) or (iii)), such retired pay shall be computed as if the member had been retired under section 1201 of this title on the date of the member's death with a disability rated as total.

(ii) In the case of an annuity provided under section 1448(d)(1)(A) of this title by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under ~~section 1448(f) of this title~~ section 1448(f)(1)(A) of this title by reason of death of a member or former member not in line of duty, such retired pay shall be computed based upon the member or former member's years of active service when he died computed under section 12733 of this title.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to the applicable percent of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than com-

putation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC OFFSET.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) SERVICEMEMBERS NOT YET GRANTED RETIRED PAY.—In the case of an annuity provided by reason of the service of a member described in clause (ii) or (iii) of section 1448(d)(1)(A) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) RATE OF PAY TO BE USED IN COMPUTING ANNUITY.—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) REDUCTION OF ANNUITIES AT AGE 62.—

(1) REDUCTION REQUIRED.—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2) AMOUNT OF ANNUITY AS REDUCED.—

(A) COMPUTATION OF ANNUITY.—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) SAVINGS PROVISION FOR BENEFICIARIES ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) SAVINGS PROVISION FOR CERTAIN BENEFICIARIES.—

(1) PERSONS COVERED.—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

(i) was a participant in the Plan;

(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) AMOUNT OF ANNUITY.—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) STANDARD ANNUITY.—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) BENEFICIARIES OF PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) SOCIAL SECURITY OFFSET.—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) SOCIAL SECURITY COMPUTATION.—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse beneficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming that the person concerned lives to age 65.

(B) MAXIMUM AMOUNT OF REDUCTION.—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) SPECIAL RULES FOR SOCIAL SECURITY OFFSET COMPUTATION.—

(A) TREATMENT OF DEDUCTIONS MADE ON ACCOUNT OF WORK.—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that becomes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) TREATMENT OF CERTAIN PERIODS FOR WHICH SOCIAL SECURITY REFUNDS ARE MADE.—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(l)(1) of the Social Security Act (42 U.S.C. 410(l)(1))—

(i) which was performed after December 1, 1980;

and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) DETERMINATION OF PERCENTAGES APPLICABLE TO COMPUTATION OF RESERVE-COMPONENT ANNUITIES.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) ADJUSTMENTS TO ANNUITIES.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN ANNUITIES WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) CERTAIN REDUCTIONS TO BE DISREGARDED.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(h) ADJUSTMENTS TO BASE AMOUNT.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN BASE AMOUNT WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) RECOMPUTATION AT AGE 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) DISREGARDING OF RETIRED PAY REDUCTIONS FOR RETIREMENT OF CERTAIN MEMBERS BEFORE 30 YEARS OF SERVICE.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) RECOMPUTATION OF ANNUITY FOR CERTAIN BENEFICIARIES.—In the case of an annuity under the Plan which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92-425, Sec. 1(3), Sept. 21, 1972, 86 Stat. 709; amended Pub. L. 94-496, Sec. 1(4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, Sec. 204, Sept. 30, 1978, 92 Stat. 846; Pub. L. 96-402, Sec. 3, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97-22, Sec. 11(a)(4), July 10, 1981, 95 Stat. 137; Pub. L. 98-94, title IX, Sec. 922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98-525, title VI, Sec. 641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99-145, title VII, Sec. 711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670; Pub. L. 99-348, title III, Sec. 301(a)(2), (b), (c), July 1, 1986, 100 Stat. 702; Pub. L. 99-661, div. A, title VI, Sec. 642(b), title XIII, Sec. 1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; Pub. L. 100-26, Sec. 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100-224, Sec. 3(a), (c), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 100-456, div. A, title VI, Sec. 652(a), Sept. 29, 1988, 102 Stat. 1991; Pub. L. 101-189, div. A, title XIV, Sec. 1403(a), 1407(a)(5)-(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588, 1589; Pub. L. 103-337, div. A, title X, Sec. 1070(e)(4), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-201, div. A, title VI, Sec. 634, Sept. 23, 1996, 110 Stat. 2566; Pub. L. 105-85, div. A, title X, Sec. 1073(a)(28), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106-65, div. A, title VI, Sec. 643(a), Oct. 5, 1999, 113 Stat. 663; Pub. L. 107-107, div. A, title VI, Sec. 642(b), (c)(2), Dec. 28, 2001, 115 Stat. 1152; Pub. L. 107-314, div. A, title X, Sec. 1062(a)(6), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108-375, div. A, title VI, Sec. 644(a), Oct. 28, 2004, 118 Stat. 1960.)

## § 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

TAB E

- Background on Reserve Component (RC) SBP Disparity Issue: A recent DFAS audit of survivor benefit payments to the survivors of deceased Reserve Component members between November 2001 and January 2012 revealed that 95 family members were receiving incorrect annuity payments under the SBP. DFAS sent a letter in January 2012 stating that a “significant error” was made in overpayment of survivor benefits based on duty status at the time of death, that federal law requires future payments to be lowered or stopped, and that family members are not liable for overpayment since they were received in good faith.
- For additional information, including downloadable copies of relevant documents, an unofficial, non-DoD website is available at [www.95letters.com](http://www.95letters.com).

## **The Reserve Forces Policy Board – Basic Overview**

The Reserve Forces Policy Board (RFPB) is a federal advisory committee mandated by law in the Office of the Secretary of Defense to "serve as an independent adviser to the Secretary of Defense to provide advice and recommendations to the Secretary on strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components." As required by statute, the board also produces an annual report which the Secretary of Defense transmits to the President and Congress on reserve component matters the board considers appropriate to include in the report.

The board consists of 20 members; a civilian chairman, a general/flag officer from each of the seven reserve components, a two-star military executive, a senior enlisted advisor, plus ten other U.S. citizens, who may or may not be government employees, with significant knowledge of and experience in policy matters relevant to national security and reserve component matters.

The board is supported by a staff consisting of a Colonel or Navy Captain from each of the six DoD reserve components. There is also a Coast Guard staff officer. These officers also serve as liaisons between their respective components and the board. The law requires them "to perform their staff and liaison duties under the supervision of the military executive officer of the board in an independent manner reflecting the independent nature of the board."

Established in 1951, the board is one of the oldest advisory committees in the Department of Defense.

In the National Defense Authorization Act of 2011, Congress significantly revised the operating framework and membership of the RFPB. Previously, other than the chairman, the board included only DoD officials and made recommendations through the Assistant Secretary of Defense for Reserve Affairs. In 2008, the Commission on the National Guard and Reserves recommended that the RFPB's governing statute (10 USC 10301) be amended because the board was not structured to obtain and provide directly to the Secretary of Defense a wide range of independent advice on National Guard and Reserve matters due to the nature of its membership and its subordination to other offices within DoD. The revised law was effective 1 July 2011.

On 12 September 2011, retired Marine Corps Major General Arnold Punaro was sworn in as the first chairman of the board under the revised structure. Other new members were sworn in at an organizational meeting on 13 October.

The board is organized into four subcommittees: Sustainment, Readiness & Availability of the Operational Reserve; Continuum of Service / Personnel Policies; Homeland Operations; and Support for Service Members, Families & Employers. Subcommittees meet as required. The full board meets quarterly. The RFPB website is at <http://ra.defense.gov/rfpb/>.